

REMARKS

Claims 1-42 are pending.

Claims 1-42 stand rejected.

Claims 1, 12, and 32 have been amended to correct minor informalities.

Claim Rejections - 35 U.S.C. § 103

Claims 1-42 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over U.S. Patent No. 7,124,101 to Mikurak (hereinafter “*Mikurak*”) in view of common knowledge. Applicants respectfully traverse the rejection.

The Examiner relies upon *Mikurak* and “common knowledge” (referenced herein as “Common Knowledge”) to establish a *prima facie* case of obviousness. Applicants respectfully agree that *Mikurak* lacks multiple features of the claimed invention, and Applicants respectfully traverse the assertion that the Common Knowledge is actually common knowledge. Additionally, even if the asserted Common Knowledge is common knowledge, Applicants respectfully submit that *Mikurak* in view of the Common Knowledge fail to teach or suggest the present invention.

***Mikurak* Lacks Sufficient Teachings and Suggestions**

Mikurak relates to “Asset tracking in a network-based supply chain environment” and controlling the network-and managing resources for managing network assets through in (sic) a network-based supply chain framework.” *Mikurak*, Title and Abstract.

Mikurak states that the:

present invention provides a new kind of web architecture framework (called “WAF” in this document) that secures, administers, and audits electronic information use. WAF also features fundamentally important capabilities for managing content that travels “across” the “information highway.” These capabilities comprise a rights protection solution that serves all electronic community members. These members include content creators and distributors, financial service providers, end-users, and others. WAF is the first general purpose, configurable, transaction control/rights protection solution for users of computers, other electronic appliances, networks, and the information highway. *Id.*, col. 82, lines 31-43.

Mikurak continues that "WAF supports a general purpose foundation for secure transaction management, including usage control, auditing, reporting, and/or payment." *Id.*, col. 89, lines 16-18. *Mikurak* continues:

The present invention allows content providers and users to formulate their transaction environment to accommodate: (1) desired content models, content control models, and content usage information pathways, (2) a complete range of electronic media and distribution means, (3) a broad range of pricing, payment, and auditing strategies, (4) very flexible privacy and/or reporting models, (5) practical and effective security architectures, and (6) other administrative procedures that together with steps (1) through (5) can enable most "real world" electronic commerce and data security models, including models unique to the electronic world.

WAF's transaction management capabilities can enforce: (1) privacy rights of users related to information regarding their usage of electronic information and/or appliances, (2) societal policy such as laws that protect rights of content users or require the collection of taxes derived from electronic transaction revenue, and (3) the proprietary and/or other rights of parties related to ownership of, distribution of, and/or other commercial rights related to, electronic information. *Id.*, col. 92, lines 33-55.

Mikurak includes some teachings regarding "automatically generating a contract between an owner of software and a user of the software." *Id.*, col. 114, lines 19-21. *Mikurak* teaches that:

First, in operation 6402, a user is allowed to request to utilize a software package after which user input relating to the user is requested and received. See operation 6404 and 6406, respectively. Such information may include identification information such as name, address, etc. In operation 6408, a tailored license agreement is then generated by utilizing the user input. FIG. 65 illustrates a procedure for performing operation 6408. In operation 6500, the terms of the license agreement are set forth. Licensor identification information is included in operation 6501. Licensee (user) identification information is set forth in operation 6502. Optionally, verification of identification may be performed in operation 6503, such as prompting a user to enter his or her telephone number and cross referencing the input number with telephone listings. *Id.*, lines 21-35.

Mikurak continues by describing using different licensing schemes such as personal, site, limited user, and concurrent user licenses depending upon the intended use of the software, e.g. individual personal computer, network environment, client-server, site, etc. *Id.*, col. 114, line 53 - col. 118, line 30.

Mikurak also discloses a “contract negotiation process” illustrated in Fig. 132. *Id.*, col. 281, line 38. *Mikurak* describes an embodiment of the contract negotiation process in col. 281, line 38-col. 282, line 7.

Initially, Applicants respectfully submit that *Mikurak* is addressing agreements with different types of concerns than the concerns addressed by the present invention. Applicants respectfully submit that despite all of *Mikurak*’s 285 pages, including the Certificate of Correction, *Mikurak* never mentions, discusses, teaches, nor suggests “a plurality of modules configured to manage distributor information” where said plurality of modules comprise:

a commission module configured to determine commission amounts associated with a sales transaction based on said selling agreement

a licensing module configured to determine if a party associated with said sales transaction has a valid license to sell products associated with the sales transaction; and

a payment module for determining payment associated with said sales transaction to said party in accordance with (i) a determination of said commission amounts determined by said commission module and (ii) a determination by said licensing module of whether said party has a valid license to sell the products associated with said sales transaction. Claim 1.

Mikurak’s discussion of distributors relates to “electronic community members.” *Id.*, col. 82, line 37. “These members include content creators and distributors, financial service providers, end-users, and others.” *Id.*, lines 38-39. The distributors relate to distributors of content and of appliances related to content. *Id.*, col. 133, lines 17-22. For example, “Content providers who employ the present invention may include, for example, software application and game publishers, database publishers, cable, television, and radio broadcasters, electronic shopping vendors, and distributors of information in electronic document, book, periodical, e-mail and/or other forms.” *Id.*, col. 173, lines 25-30. Not only does *Mikurak* neither teach nor suggest the foregoing aspects of claim 1, Applicants have been unable to locate any recognition by *Mikurak* that a distributor would need a valid license to receive a commission payment.

The relevancy of the foregoing will be apparent in the subsequent discussion regarding the combination of *Mikurak* and the Common Knowledge.

Challenge to Assertion of “Common Knowledge”

The Examiner has rejected the present claims as obvious over *Mikurak* in view of Common Knowledge. Applicants respectfully submit that the Common Knowledge is not in actuality ‘common knowledge’.

The Manual of Patent Examining Procedure (MPEP) § 2144.03 provides guidance on the appropriateness of relying on common knowledge in the rejection of an applicants' claimed invention. The MPEP states that:

Official notice unsupported by documentary evidence should only be taken by the examiner where the facts asserted to be well-known, or to be common knowledge in the art are capable of instant and unquestionable demonstration as being well-known. As noted by the court in *In re Ahlert*, 424 F.2d 1088, 1091, 165 USPQ 418, 420 (CCPA 1970), the notice of facts beyond the record which may be taken by the examiner must be "capable of such instant and unquestionable demonstration as to defy dispute" (citing *In re Knapp Monarch Co.*, 296 F.2d 230, 132 USPQ 6 (CCPA 1961)). ... It is never appropriate to rely solely on "common knowledge" in the art without evidentiary support in the record, as the principal evidence upon which a rejection was based. *Zurko*, 258 F.3d at 1385, 59 USPQ2d at 1697. MPEP § 2144.03(A).

The Office has relied upon common knowledge as to the existence of multiple elements of claim 1, for example:

a commission module configured to determine commission amounts associated with a sales transaction based on said selling agreement

a licensing module configured to determine if a party associated with said sales transaction has a valid license to sell products associated with the sales transaction; and

a payment module for determining payment associated with said sales transaction to said party in accordance with (i) a determination of said commission amounts determined by said commission module and (ii) a determination by said licensing module of whether said party has a valid license to sell the products associated with said sales transaction. Claim 1.

Applicants respectfully submit that although it was well-known that sales agents are supposed to have licenses to conduct certain types of sales transactions, a system for managing relationships between a first party and a second party that includes the above cited elements is not obvious. The Background section of the present application states that “any plan for distribution

channel management must consider the number of channels, the number of distributors, compensation complexity, regulatory and licensing requirements and the number and types of products that will be sold.” Present Application, Background, p. 3, lines 10-13. Thus, the present application recognizes that licensing requirements are known. The Background section of the present application also asserts that “The distribution channel model within the financial services industry is very complex.” *Id.*, lines 1-2. Furthermore, “Credential management is a critical issue for many firms.” *Id.*, p. 8, line 1. “This need [to track accreditation] is made more acute by constantly changing governmental rules and regulations, as well as by different regulations imposed by the different jurisdictions in which a firm operates.” *Id.*, lines 8-11.

Although the necessity of licensed individuals in certain sales transaction contexts was well-known, Applicants respectfully submit, and have documented in the Present Application, that such recognition does not teach or suggest an enabling solution to a very complex problem such as:

... a plurality of modules configured to manage distributor information;

 said plurality of modules comprising a selling agreements module configured to generate a selling agreement;

 said plurality of modules comprising a commission module configured to determine commission amounts associated with a sales transaction based on said selling agreement;

 said plurality of modules comprising a licensing module configured to determine if a party associated with said sales transaction has a valid license to sell products associated with the sales transaction; and

 said plurality of modules comprising a payment module for determining payment associated with said sales transaction to said party in accordance with (i) a determination of said commission amounts determined by said commission module and (ii) a determination by said licensing module of whether said party has a valid license to sell the products associated with said sales transaction.

Accordingly, Applicants respectfully request the Examiner to provide documentary evidence to support all of the Examiner's conclusions regarding common knowledge including that “licensing modules and appointments to determine commission amounts are common knowledge in the licensing and transaction art.” Office Action, p. 3.

Mikurak Lacks Sufficient Teachings and Suggestions of a Need or Usefulness of, e.g. a commission module, a licensing module and a payment module as set forth in claim 1.

Even assuming *arguendo* that “licensing modules and appointments” are common knowledge, Applicants respectfully submit that *Mikurak* in view of the alleged Common Knowledge neither teaches nor suggests the present invention. In *KSR International Co. v. Teleflex, Inc.*, 82 USPQ2d 1385 (2007) the Court stated that:

If a person of ordinary skill in the art can implement a predictable variation, and would see the benefit of doing so, §103 likely bars its patentability. Following these principles may be difficult if the claimed subject matter involves more than the simple substitution of one known element for another or the mere application of a known technique to a piece of prior art ready for the improvement. To determine whether there was an apparent reason to combine the known elements in the way a patent claims, it will often be necessary to look to interrelated teachings of multiple patents; to the effects of demands known to the design community or present in the marketplace; and to the background knowledge possessed by a person having ordinary skill in the art. To facilitate review, this analysis should be made explicit. But it need not seek out precise teachings directed to the challenged claim's specific subject matter, for a court can consider the inferences and creative steps a person of ordinary skill in the art would employ.

Applicants respectfully submit that the elements cited as Common Knowledge in the Office Action are not substitutions for elements taught by *Mikurak* because, as admitted in the Office Action, *Mikurak* lacks any teachings or suggestions or the missing elements.

Additionally, Applicants respectfully submit that the *Mikurak* prior art does not evidence the mere application of a known technique to a piece of prior art ready for the improvement because, as previously discussed, although agreements and distributors are discussed in *Mikurak*, Applicants have been unable to locate any recognition in Mikurak that a distributor described in Mikurak would need a valid license to receive a commission payment. Thus, there is no evidence in the record that *Mikurak* is “ready for the improvement” of the claimed invention.

Because *Mikurak* apparently contains no teaching or suggestion that a distributor in *Mikurak* would need a valid license to receive a commission payment, there is no apparent reason to combine Mikurak with the alleged Common Knowledge as required by *KSR*.

Additionally, for at least the same reasons, Applicants respectfully submit that *Mikurak* in view of the alleged Common Knowledge neither teaches nor suggests:

a database source comprising a plurality of data objects representative of at least one distributing party, at least one selling agreement and at least one license or appointment associated with said at least one distributing party; and

a distributor management engine configured to obtain at least one of said plurality of data objects from said database source and determine whether said at least one distributing party conforms with said at least one selling agreement and said at least one license or appointment is valid. **Claim 12.**

Additionally, for at least the same reasons, Applicants respectfully submit that *Mikurak* in view of the alleged Common Knowledge neither teaches nor suggests:

a database source comprising a plurality of data objects representative of said at least one distributor, at least one selling agreement and at least one license or appointment associated with said at least one distributor;

a commission engine configured to determine a commission amount associated with said at least one distributor by evaluating said at least one selling agreement data object;

...

said plurality of modules comprising, a licensing and appointment module configured to determine if said at least one license or appointment data object associated with said at least one distributor is in compliance with a set of industry regulations;

said plurality of modules comprising, a selling agreements module configured to enable said institution to define and create a selling agreement with said at least one distributor; and

said plurality of modules comprising, a payment module configured to determine said commission amount to said at least one distributor. **Claim 32.**

Additionally, for at least the same reasons, Applicants respectfully submit that *Mikurak* in view of the alleged Common Knowledge neither teaches nor suggests:

The system of claim 18 wherein said workflow process events are determined by business rules defined by a user. **Claim 19.**

Additionally, for at least the same reasons, Applicants respectfully submit that *Mikurak* in view of the alleged Common Knowledge neither teaches nor suggests:

The system of claim 38 wherein said selling agreements module manages a set of business rules governing how contract components are combined into said at least one selling agreement associated with each of said at least one distributor. **Claim 39.**

Accordingly, for at least the foregoing reasons, Applicants respectfully submit that claims 1, 12, and 32 and claims directly or indirectly thereon are allowable.

Applicants respectfully request withdrawal of the rejection.

CONCLUSION

In view of the amendments and remarks set forth herein, the application is believed to be in condition for allowance and a notice to that effect is solicited. Nonetheless, should any issues remain that might be subject to resolution through a telephonic interview, the examiner is requested to telephone the undersigned at 512-338-9100.

CERTIFICATE OF TRANSMISSION

I hereby certify that on June 11, 2008 this correspondence is being transmitted via the U.S. Patent & Trademark Office's electronic filing system.

/Kent B. Chambers/

Respectfully submitted,

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